

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE HENRY GONZALEZ,
Individually and on behalf of all
others similarly situated,

AFFIDAVIT

Plaintiff,

-against-

Case No. 12-CV-3465 (BMC)

AUTO-CHLOR SYSTEM OF NEW YORK
CITY, INC., et. al.,

Defendants.

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STATE OF NEW YORK)

SS.:

COUNTY OF QUEENS)

JAVIER HERNANDEZ, being duly sworn, deposes and says:

1. I have worked for AUTO-CHLOR SYSTEM OF NEW YORK CITY, INC. (hereinafter "Auto-Chlor") for approximately 2 1/2 years, or since March, 2010.
2. When I began working for Auto-Chlor, my title was Route Driver. My duties as a Route Driver were to service and sales on dishwashers for our current customers. My current position at Auto-Chlor is Route Driver.
3. The person who I reported to at Auto-Chlor when I first began and currently is Sam Villanueva (hereinafter "Sam").
4. When I began working for Auto-Chlor, I was provided with 6 uniforms, which consist of a button down shirt and slacks that have the Auto-Chlor logo on them.

5. My uniforms are cleaned weekly by a company called Aramark. If my uniform gets ratty or torn, Auto-Chlor replaces my uniform through Aramark. I have never been charged for my uniform.

6. When I first started working for Auto-Chlor, I made \$20.65 per hour plus time and a half for all hours worked over forty in one week. After approximately three months, when I completed training and my probation period, my hourly rate decreased to \$11.00 per hour, plus a 13% commission per each hand sale (selling products such as soap, etc.). I currently make \$13.00 per hour plus commissions.

7. As far as benefits go, Auto-Chlor is very generous. In addition to my regular rate of pay, I also receive full medical benefits, paid sick time, holidays and vacation time. Not only that, but Auto-Chlor is allowing me participate in profit sharing.

8. When I first started working for Auto-Chlor, my regular shift was from 8:00 A.M. until 5:00P.M., with a one hour break each day, 5 days a week, or Monday through Friday. In addition to my regular shift, I was also required to work "on call" on a rotation, which resulted in me working on call for one week out of approximately every 5-8 weeks or so, it would vary depending on how many employees were on staff.

9. I currently work from 8:00 A.M. until 5:00PM, with a half-hour lunch break each day, 5 days a week or Monday through Friday. I still work "on call" on rotation, which results in me working "on call" one day of the week every week, and one weekend every 5-8 weeks or so, depending on how many employees are on staff.

10. When I am "on call", I am not required to be at work, but am allowed to do whatever I want so long as I am available a phone call away to respond to customer

issues. When a customer reports an issue with their machine when I am “on call”, I am notified and leave wherever I am to service the customer. I am compensated for my “on call” time by keeping time log of the time from when I leave my house, or current location, until I return home, or to my current location. At the end of my “on call” week, I report my time to my supervisor, Sam, by filling out an on-call log, so that he can include my time in that week’s payroll.

11. For the entire time that I have worked for Auto-Chlor, it has always been company policy that “on call” time is compensated from the time we leave our house until the time we return home, and everyone knows that. Everyone also knows that the reporting of our “on call” time is based upon the “honor system” and that our boss relies upon us to accurately report our time. I have always been paid for the time I have reported to my boss and that time has always included my travel time from my home to the customer’s location and my travel time from the customer’s location back home.

12. I have been told that the plaintiff in this case is claiming that the “on call” time is reported from the time we arrive at the customer’s location until the time we leave the customer’s location. That simply is not true and has not been the policy of Auto-Chlor at least as long as I have been here.

13. If I ever had a problem with my paycheck, I know that it is Auto-Chlor’s policy that any discrepancy be reported to my boss, Sam, and I know that it would be taken care of immediately.

14. I do remember a former employee named Jose “Henry” Gonzales, but, we never worked directly together because Henry was an installer and I am a driver. I do not

know what his shift was, but, I remember him working "on call". As far as I know, he was aware of Auto-Chlor's "on call" policy, meaning, he knew he was responsible for reporting his hours from the time he left his house to the time he returned. Henry reported his hours to Sam, as Sam is the person in charge of payroll at our branch.

15. I cannot say for sure whether or not there is any basis in fact to Henry's claim that he was not paid "on call" time from the time he left his house until the time arrived back home. I can say that it is Auto-Chlor's policy to compensate employees from the time they leave home, or wherever they are, until they return home during "on call" time.

16. I am not aware of anyone ever not being compensated for their "on call" time from the time they left home until the time they returned home.


JAVIER HERNANDEZ

Sworn to before me this
24th day of October 2012.


NOTARY PUBLIC

Kristin J. Kircheim
Notary Public, State of New York
No. 02RT6241500
Qualified in Nassau County
Commission expires May 23, 2015.